CHAPTER XVI.

GENERAL PRINCIPLES OF CRIMINAL LAW RELATING TO OFFENCES.

SECTION I.—GENERAL EXCEPTIONS.

§ 1.—*Acts that would ordinarily be Offences are excused in some cases.*

In the Indian Penal Code there are a number of sections which lay down certain principles regarding all offences. In the Indian Penal Code the word "offence" is defined to be an act or omission punishable *under that Code:* but an important section (40) extends this meaning to *all* offences, in the case of a number of sections, and to offences under special[1] and local laws, if punishable with a certain amount of penalty (six months' prison and upward, with or without fine) in the case of some other sections.

As many of the sections mentioned in section 40 lay down important principles, and these principles are applied to forest offences as well as others, it is necessary for us to study them.

I have had some doubt whether I ought to place this chapter first or last. I have concluded in favour of the latter position, not because it is most logical, but merely because it is most easy for the student to master first the general subject of forest protection, and the offences which arise on the breach of the provisions of the law, whether Penal Code or Forest, and that *then* he should be made aware of those circumstances (which will at once make themselves understood as soon as they are stated, but) which, in all cases where they arise, produce their natural effect in excusing the offence, or taking it out of the category of offences altogether.

[1] The Forest Act is a "special law," *i.e.*, a law devoted to a special subject. A "local" law is a law which has force only in a special locality. The Hazara Forest Regulation (II of 1879) for example is both "special" and "local." (Indian Penal Code, sections 41, 42.)

I shall not give the whole of Chapter IV of the Penal Code, but select those parts that are most useful. The whole chapter may, however, be read with advantage.

§ 2.—*Act done under mistake of fact.*

There are circumstances in which acts, which might otherwise be offences, become legally excused.

The first is noted in Indian Penal Code, section 76, where an act done is one which the law binds the doer to perform, or is believed to be in accordance with such legal duty, though really, owing to a *mistake* of *fact* (*not* of *law*), it is not warranted[2]. For example, a forest guard is bound by his public legal duty to arrest X. This is no offence. Not only so, but if by mistake of fact, believing Y to be X, he arrests Y, he has still committed no offence.

Sections 77 and 78 I pass over, as they relate to acts done by Judges and Courts of Justice.

Section 76 referred to cases where the doer of the act was bound by law (or believed himself to be so under mistake of fact) to do the act. Section 79 refers to similar cases where he is *not bound* to do the act but still is *justified* by law, or where the person under a mistake of fact (as in section 76) believes himself to be justified.

Example.—B, a private person, seeing an act done by A, though the act may be an offence of some kind, would commit an act of unlawful restraint or criminal force in arresting the person; but if, under a mistake of fact, B supposed that A's act was in fact a murder[3], he would be legally excused if, acting *bonâ fide* under the mistake, he arrested A.

[2] It is a well-known principle (admitting of no proof to the contrary) that every one knows the law. It is not true as a fact that every one knows, or can know, all the law: but it is equally true that if in ordinary matters a man were allowed to plead, for example, that he did not know it was forbidden to steal, the business of daily life could not go on. In cases where the provisions of the law are artificial, the Magistrate can always by his lenient sentence make any practical allowance for the effects of *bonâ fide* ignorance or mistake.

[3] In some graver cases, as murder, *every one* has a right to arrest the offender.

§ 3.—*Accident or Misfortune.*

Section 80 runs as follows:—

"80. Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge, in the doing of a lawful act in a lawful manner, by lawful means, and with proper care and caution.

"*Illustration.*—A is at work with a hatchet, the head flies off and kills a man who is standing by. Here, if there was no want of proper caution on the part of A, his act is excusable and not an offence."

No comment is needed on this.

§ 4.—*Act done to prevent other Mischief.*

Section 81 is an exception of the same nature:—

"Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

"*Explanation.*—It is a question of fact, in such a case, whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act, with the knowledge that it was likely to cause harm."

An illustration might occur in a forest where, in case of a fire, a Forest Officer or other person should in good faith light a "counter-fire" with a view to burn up a strip and so prevent the original fire spreading.

Illustration B, given in the Code, also gives a typical case:

"(*b*) A, in a great fire, pulls down houses in order to prevent the conflagration from spreading. He does this with the intention, in good faith, of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of an offence."

§ 5.—*Act done of Necessity.*

In connection with this exception must be noticed the case of a man doing some harm to others to prevent injury to himself. May a man, for example, steal food to prevent himself from dying

of hunger? It is held in such a case that a legal offence is committed, though, of course, a Magistrate might mitigate his sentence according to the circumstances.

Under this head also would come cases where acts are committed of necessity, as where cattle are driven into a forest to seek shelter from a sudden storm, or where persons overtaken at night in a forest, cut wood and make a fire to save themselves from suffering by cold or to scare away wild beasts.

A technical offence is committed; but in such a case, of course, a prosecution would not be instituted; if it were, and this defence appeared true, a merely nominal sentence would be awarded[4].

§ 6.—*Acts by Children, Lunatics, &c.*

The next series of exceptions relate to personal defects, as regards age and understanding, which render the act no offence.

Sections 82 and 83 provide that nothing is an offence if done by a child under seven years old[5], or by a child over seven years but under twelve, if (as a matter of fact to be enquired into at the trial) it does not appear that the child has attained "sufficient maturity of understanding to judge of the nature and consequence of his conduct *on that occasion*" (*i.e.*, the inquiry must go to the fact of his being able to understand the nature and consequences of the particular act with which he is charged).

Section 84 refers to cases where the person committing an offence is excused by reason of "*unsoundness of mind,*" which means incapacity to know the nature of the act, or that the act is "either wrong or contrary to law."

I cannot enter into detail on the subject, but I may state generally, that the person who sets up this defence (or on whose

[4] By the Bavarian law of 1852 (Art. 60) as regards forest offences, acts done under demonstrable necessity cease to be punishable, but the person so acting is found to report the case to the Forest Officer within 24 hours, and to make good any damage he may have occasioned, by a money payment. The Austrian Forest law (Art. 66) has similar provisions regarding cattle trespassing of necessity, *e.g.*, to seek shelter in a storm.

[5] Some good remarks will be found in Mayne's I. P. Code (9th edition), p. 67.

behalf it is set up) must prove it, and that the essential requisites are clearly stated in the section. Not every hallucination or delusion or partial insanity will excuse: it must be shown that at the time, the offender was absolutely incapable of knowing the nature of the act, or that it was wrong or contrary to law.

§ 7.—*Under influence of Intoxication.*

Section 85 refers to the case of *intoxication*. This does not excuse an offence if the intoxication was voluntary; but it is a good defence if some drug or intoxicating substance has been administered without the accused person's knowledge or against his will.

Section 86 adds some further provisions on the subject of intoxication, which need not be detailed.

§ 8.—*Acts done by Consent.*

Sections 87-93 I shall pass over. They relate to cases of harm done by consent, and to the case of injury caused by making a communication (which may alarm or affect an invalid, &c.); these matters can hardly come within a Forest Officer's cognizance. But it may be proper to remark that it is on this same principle that the acts prohibited in forests become excused—*i.e.*, are not offences—when it is shown that the Forest Officer had given permission, or that a properly-recorded *right* justified the doer.

In order to prevent such a plea being raised unjustly, and thus giving rise to difficulty in ascertaining the fact, it is usually provided that the permission must be *in writing*, so that there can be no doubt about it. It is *never* difficult for the Forest Officer to give a few written lines signed by himself, in all cases where he permits the removal of any produce, &c.

And in the same way, the cutting of trees (for example) which would be an offence if done by any ordinary individual, is not an offence when done by the Forest Officer or the contractor, coolie, &c., working under his orders, as his agent. For the Forest Officer is clearly acting within his *rights*, as representative of the owner (the Government, &c.). There is no need, therefore, in such sections

as 25, &c., to say that the cutting, &c., which is prohibited, is excused when done by the owner himself—for that is what it comes to, when the Forest Officer does it.

§ 9.—*Acts under Compulsion.*

Section 94 may be briefly noticed. It refers to cases excused by reason of *compulsion*. The Code itself may be referred to as to what amounts to 'compulsion.'

§ 10.—*Acts of very Trifling Character.*

Section 95 should be noted[6]. The object is to take out of the category of criminal offences, those petty and trifling acts which, though strictly within a definition of crime or offence, are yet of such a kind that the "harm is so slight that no person of ordinary sense and temper would complain of such harm." In a case reported in Ind. Law. Rep. V. Bombay (Criminal Cases), page 35, a person had been convicted of stealing from a bit of forest land (it happened to be a private forest, but that does not affect the point) a few pods of some tree, worth 3 pie; the conviction was quashed under this section. It would be otherwise, if the act was really *a part* of an act of graver character, *e.g.*, a thief may have got access to a lot of property and yet had time only to appropriate a very small quantity. I recollect a case, where a notorious burglar had broken into premises hoping to find a rich booty but only succeeded in carrying off a bit of old iron quite worthless; he was rightly given a heavy sentence.

§ 11.—*Act done in Self-defence.*

The rest of this fourth chapter (General Exceptions) (sections 96-108) is taken up with the subject of the "right of private defence'

[6] I have occasionally noted forest cases which should, in view of this section, have never been prosecuted. It is very desirable to avoid making forest conservancy more obnoxious to the ignorant peasantry than in the nature of things it must be; and a wise discretion should be exercised in filing a criminal complaint of a forest offence if it is really insignificant, or a warning would suffice. Stripping off leaves from a tree is a forest offence, because such an act may cause the death of, or serious injury to, the tree, but obviously it would be unreasonable to punish a man for picking off a single leaf; yet as the plural includes the singular, such a prosecution would be possible except for this section 95.

which, as everybody knows, excuses acts of violence, and even causing death of an aggressor, *under certain circumstances.*

The right extends to the defence of one's own person, and that of any one else, and also to the defence of one's own (or any one else's) property, under the proper circumstances in each case.

I shall not enter into this subject, but merely remark that no right of private defence exists against any act (which is not a murderous attack causing "apprehension of death or grievous hurt[7]") when done by a "public servant acting in good faith under colour of his office," and that, even when the act is not (as may turn out on argument) "strictly justifiable by law." (Section 99.)

A public servant, who is obliged to proceed to the use of force in arresting, or to make a search, or indeed in any act in which he makes use of legal force, should always be prepared to show his warrant (if it is a case where such a warrant has been issued), and should wear his uniform or official badge, or whatever it is, so that there may be no doubt about his being a public servant in the execution of his duty. This is necessary, because the right of private defence is not taken away as just stated, unless the person exercising it *knows, or has reason to believe,* that the public servant acting against him *is* such.

§ 12.—*Responsibility of one Person for act done by another.*

I may take occasion, while still dealing with the general exceptions, to mention a fact which is not stated in the chapter we are considering, because it is a general principle of law, and not one immediately referring to acts done by a person.

No one is *criminally* liable for any one else's act, merely by reason of a relation subsisting between them; although of course he may be liable to civil damages. A master, for instance, is not responsible for a forest offence done by his servant (unless, of course,

[7] "Grievous hurt" has a technical meaning in the Code (see section 319). It refers to all acts permanently injuring or maiming, permanent disfiguration of the head or face, breaking bones or teeth—any hurt which endangers life or disables the sufferer, or keeps him in severe bodily pain, for 20 days.